

ASUS COMPUTER INTERNATIONAL, et
al.,
Plaintiffs,
v.
INTERDIGITAL, INC., et al.,
Defendants.

Case No. 15-cv-01716-BLF

**OMNIBUS ORDER RE: SEALING
MOTIONS AT ECF 318 AND ECF 319**

[Re: ECF 318, 319]

Before the Court are Plaintiffs' administrative motions to file under seal portions of their opposition brief and exhibits, and reply brief and exhibits, in connection with the parties' motions for summary judgment. ECF 318, 319. For the reasons stated below, Plaintiffs' motions are GRANTED.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

However, “while protecting the public’s interest in access to the courts, we must remain

1 mindful of the parties’ right to access those same courts upon terms which will not unduly harm
2 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.
3 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
4 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto
5 Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
6 for access to court records attached only to non-dispositive motions because those documents are
7 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
8 to seal the documents attached to such motions must meet the lower “good cause” standard of
9 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
10 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
11 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
12 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated by
13 specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*,
14 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during discovery
15 may reflect the court’s previous determination that good cause exists to keep the documents
16 sealed, *see Kamakana*, 447 F.3d at 1179–80, but a blanket protective order that allows the parties
17 to designate confidential documents does not provide sufficient judicial scrutiny to determine
18 whether each particular document should remain sealed. *See Civ. L.R. 79-5(d)(1)(A)* (“Reference
19 to a stipulation or protective order that allows a party to designate certain documents as
20 confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

21 In addition to making particularized showings of good cause, parties moving to seal
22 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
23 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
24 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
25 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
26 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
27 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
28 material” which “lists in table format each document or portion thereof that is sought to be

1 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by
2 highlighting or other clear method, the portions of the document that have been omitted from the
3 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
4 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
5 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

6 **II. DISCUSSION**

7 The Court has reviewed Plaintiffs’ sealing motions and the declarations of the designating
8 parties submitted in support thereof. The Court finds that the parties have articulated compelling
9 reasons to seal certain portions of the submitted documents. The proposed redactions are
10 generally narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables
11 below.

12 **A. ECF 318 (Plaintiffs’ Motion as to Plaintiffs’ Opposition and Exhibits)**

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
318-4	Exhibit A to Sealing Declaration	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties’ licensing negotiation communications. Franzinger Decl. ¶ 2 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-5	Exhibit B	GRANTED.	Contains confidential information relating to Defendants’ licenses with third parties. Rees Decl. ¶ 4, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
318-6	Exhibit C	GRANTED.	Contains confidential information relating to the parties’ arbitration proceedings. Franzinger Decl. ¶ 3 at ECF 318-1.
318-7	Exhibit D	GRANTED.	Contains confidential information

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	<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
1				relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 5 at ECF 318-1.
2	318-9	Exhibit E	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 6 at ECF 318-1.
3	318-10	Exhibit F	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 7 at ECF 318-1.
4	318-11	Exhibit G	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 8 at ECF 318-1.
5	318-12	Exhibit H	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 9 at ECF 318-1.
6	318-13	Exhibit I	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 10 at ECF 318-1.
7	318-14	Exhibit J	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 13, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
8	318-16	Exhibit K	GRANTED as to highlighted portions by the designating parties.	Contains confidential and highly sensitive information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 12 at ECF 318-1.
9				Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 14, ECF 273. Disclosure of such information would cause harm to
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	<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
1				Defendants, the designating party. <i>Id.</i>
2	318-18	Exhibit L	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 15, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
3	318-19	Exhibit M	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 16, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
4	318-20	Exhibit N	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 17, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
5	318-21	Exhibit O	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Franzinger Decl. ¶ 16 at ECF 318-1.
6	318-22	Exhibit P	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 17 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
7	318-23	Exhibit Q	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 18 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
8	318-25	Exhibit R	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiation communications.

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<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
			Franzinger Decl. ¶ 19 at ECF 318-1.
318-26	Exhibit S	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 20 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-27	Exhibit T	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 21 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-28	Exhibit U	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 24, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
318-29	Exhibit V	GRANTED.	Contains confidential information relating to the parties' licensing agreement. Franzinger Decl. ¶ 23 at ECF 318-1.
318-31	Exhibit W	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to plaintiffs' pricing strategies and the parties' negotiations. Franzinger Decl. ¶ 24 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-33	Exhibit X	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 25 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
			Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 27, ECF 273. Disclosure of such

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	<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
1				information would cause harm to Defendants, the designating party. <i>Id.</i>
2	318-34	Exhibit Y	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 28, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
3	318-35	Exhibit Z	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 29, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
4	318-36	Exhibit AA	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 30, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
5	318-38	Exhibit BB	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing agreements. Rees Decl. ¶ 31, ECF 273. <i>Id.</i>
6	318-40	Exhibit CC	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiations. Rees Decl. ¶ 32, ECF 273. <i>Id.</i>
7	318-42	Exhibit DD	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to parties' licensing agreement. Franzinger Decl. ¶ 31 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
8	318-44	Exhibit EE	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to parties' licensing agreement. Franzinger Decl. ¶ 32 at ECF 318-1. Disclosure of such

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
			information would harm Plaintiffs. <i>Id.</i>
318-45	Exhibit FF	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 33 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-46	Exhibit GG	GRANTED.	Contains confidential information relating to parties' licensing agreement. Franzinger Decl. ¶ 34 at ECF 318-1. Disclosure of such information would harm Plaintiffs. <i>Id.</i>
318-47	Exhibit HH	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 36, ECF 273. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>

17 **B. ECF 319 (Plaintiffs' Motion as to Plaintiffs' Reply and Exhibits)**

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
319-4	Exhibit A	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 2 at ECF 319-1. Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 4, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
319-5	Exhibit B	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 5,

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	<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
1				ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
2	319-6	Exhibit C	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 6, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
3	319-8	Exhibit D	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 7, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
4	319-10	Exhibit E	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' license negotiations with Plaintiffs. Rees Decl. ¶ 8, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
5	319-11	Exhibit F	GRANTED.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 9, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
6	319-13	Exhibit G	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' internal patent analyses. Rees Decl. ¶ 10, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
7	319-15	Exhibit H	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to the parties' licensing negotiation communications. Franzinger Decl. ¶ 9 at ECF 319-
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<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
			1. Contains confidential information relating to Defendants' internal licensing practices and negotiation strategies. Rees Decl. ¶ 11, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>
319-17	Exhibit I	GRANTED as to highlighted portions by the designating parties.	Contains confidential information relating to Defendants' licenses with third parties. Rees Decl. ¶ 12, ECF 302. Disclosure of such information would cause harm to Defendants, the designating party. <i>Id.</i>

III. ORDER

For the foregoing reasons, Plaintiffs' motions at ECF 318 and ECF 319 are GRANTED. The parties need not file lesser redacted versions of the documents, as the respective designating parties have already done so.

IT IS SO ORDERED.

Dated: November 1, 2018



BETH LABSON FREEMAN
United States District Judge